(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. During the early part of your service here were you always a supervisor? A. No.

Q. At times you were an assistant to Colonel Foster, weren't you? A. Colonel Kielsmeier.

Q. Were you ever an assistant to Colonel Foster?

A. He was the Ninth Service Command veterinarian.

Q. Were you ever an assistant to Colonel Foster?

A. No.

Q. Was he during any period of time your superior officer?

A. As the Ninth Service Command veterinarian, yes.

Q. During what period of time that you were inspecting eggs at the plant of Nye & Nissen was Colonel Foster your superior officer?

A. As the Ninth Service Command veterinarian.

Q. In any capacity at all during what period of time was he your superior officer in the work you were doing?

A. I would say from 25 November, 1940, to approximately 1 January, 1944.

Q. From December, 1940——

A. To the time he retired. I wouldn't say that date definitely.

Q. Give me the date as best you remember.

A. I don't recall just when the Colonel retired from the active service.

Q. Your best recollection is around January 1, 1944?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. It was between 1 January, 1944, and 23 June. I don't know just exactly.

Q. Was he your superior officer when you were down there on the wharf working with the FBI?

A. Part of the time, yes.

Q. So then he would be your sperior officer after January 1, is that right? A. Yes.

Q. In the early stages of your work in the Veterinary Corps you were a lieuteniant, weren't you, when you first went out to Nye & Nissen?

A. Yes. [579]

Q. When you would go out there with Colonel Kielsmeier, did you ever go out there with Colonel Foster? A. No.

Q. Did you ever see Colonel Foster in the Nye & Nissen plant? A. No.

Q. Did you ever see Colonel Kielsmeier in that plant? A. Yes.

Q. Many times, isn't that right?

A. A few times, yes.

Q. How many times a month would he be out there?

A. I don't recollect how many times a month.

Q. Over what period of time did you serve also under Colonel Kielsmeier as your superior officer?

A. I would say from 25 November, 1940, until I took command at the Presidio, San Francisco, as a captain, which was in May, I believe, 1942.

Q. May, 1942?

A. If I remember correctly, yes. It is not definitely that date.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. That would be a period of about 18 months?

A. Yes.

Q. In that period of 18 months how many times have you seen Colonel Kielsmeier in the plant of Nye & Nissen?

A. I don't remember how many times.

Q. More than ten?

A. I don't remember how many.

Q. More than twenty?

A. I don't remember the exact number of times.

Q. More than 50?

A. I don't remember how many times.

Q. Now, in the period of time, whether it was 10, 20, 30, 40, 50, when you would go out there with Colonel Kielsmeier, how many men would be in your car when you went with the Colonel [580] and you were a lieutenant?

A. It would be the Colonel and a driver and myself.

Q. There would always be at least one or two men also? A. No.

Q. Wasn't it the practice for you to go in there in parties of four, the driver, an assistant, you as the lieutenant, and the colonel? Wasn't that the normal method of going to that plant?

A. I would be with the colonel in the official car. I believe there would be a driver on most occasions, yes.

Q. And yourself? You will say there would be three or four when you went in in the normal occasion?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. Those days the driver was just a driver and that is all. He was not a meat and food inspector.

Q. How many men would go to the plant when you were out there with the Colonel?

A. The colonel and me?

Q. Yes, and you? A. Yes.

Q. Just the two of you? A. Yes.

Q. Wasn't it the practice for you to go in there with anywhere from three, four and five men?

A. What period are you speaking about?

Q. During the period of time Colonel Kielsmeier was your superior officer and you went out there with him. A. No.

Q. Later, when your rank advanced, when you went out there you went with a driver and an assistant, is that correct?

A. No, just an assistant. The driver was the assistant meat and food inspector. [581]

Q. There were just two of you, is that right?

A. Yes.

Q. Will you describe when you went out there with Colonel Kielsmeier the mode of operation of the inspection of eggs in the year 1941?

A. I didn't understand the question.

Q. In the period of time in 1941 when you went out to the plant of Nye & Nissen to inspect eggs, will you describe the procedure followed, as you saw and observed it followed?

A. We would be met at the platform by Mr. Goddard, and taken back and shown the sample of eggs that were intended for delivery to any camp,

(Testimony of Lt. Col. Pearl Hugh Hand.)

post or station at which it was ordered. The colonel would take a piece of white chalk and mark the sample cases that he desired to inspect. Then the samples would be withdrawn from the particular lot of eggs being sampled and that ran from the bottom of the pile, the middle of the pile, the top and the ends. The colonel was very particular about that. Then they would be placed on a tray or flat or conveyance by an employee of the plant and taken back to the candling room, a hallway between, I would say, the butter room and the general candling booth, where they were candled with their candles.

Q. In this period, Colonel, we are on Townsend Street, aren't we?

A. Yes. Then the Colonel and myself would go in the candling room and be supplied with two lights. They would spell off two the regular candling ladies and give us the two lights to candle the eggs. I would be instructed [582] by the colonel to assist in the candling in those days. Then the candler and myself were making inspections and we were very, very busy.

Q. You were very, very busy?

A. We had numerous plants to go to, so it would limit the inspection. That is the reason I helped the Colonel with the candling.

Q. At that time, Colonel, in the year 1941, the draft law was in effect and the Army was in that period of getting many men in the service, were they not?

A. Yes, but not meat and food inspectors.

(Testimony of Lt. Col. Pearl Hugh Bland.)

Q. What?

A. Not meat and food inspectors.

Q. But you folks were very busy; they had supplemented your work——

A. Not at that time, no.

Q. The suppliers of meat and foods, they were pretty busy, too, supplying the Army, weren't they?

A. I wouldn't say that, not at that time.

Q. Not as busy as they were later, no, but they were busier than they were earlier?

A. I don't know what you mean by "earlier."

Q. Now, Colonel, at all events, at the time that the eggs were selected in your presence on the occasions you were there, the eggs were selected and marked by the Colonel? A. Yes.

Q. With a piece of white chalk? A. Yes.

Q. Did he ever use a paint brush to mark them?

A. I believe on a few occasions he used a stencil brush, a purple mark. [583]

Q. That was the stencil mark, the VC mark, he would sometimes use that?

A. Stamping that data.

Q. The data part of it?

A. Yes. Then if the eggs didn't pass he would go and cross it out? A. With a stencil brush.

Q. But the general method was to use a piece of white chalk, is that right? A. Yes.

Q. During the period in 1941 when you were down there you saw Mr. Goddard, is that right?

A. Yes.

Q. You saw Mr. Monchbarsh? A. Yes.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. You saw other people in the plant?

A. Mr. Menges.

Q. Mr. Menges. Did you ever see a man named Pineda, a man sitting out in the corridor out there for the last week or ten days?

A. Do you mean in 1941?

Q. In 1941, yes.

A. I saw him in the butter room, not in connection with eggs.

Q. Do you ever remember any occasion when you were in there with Colonel Kleismeier where Mr. Pineda ever showed you how to pick out the eggs you wanted to inspect, so to be sure you inspected any particular eggs? A. Of eggs?

Q. Yes.

A. No. It was handled by Mr. Goddard.

Q. Did Mr. Goddard ever tell you what eggs to pick out when you went to make your inspections?

A. No.

Q. In other words, on every occasion when you went in there in 1941, 1942, when you were working under these men of higher rank, and later when you had the top rank, you selected [584] your own cases for inspection, did you not, Colonel? A. Yes.

Q. Neither in the plant of Nye & Nissen or any other plant did you let any employee of the plant tender you cases as typical of the lot to be inspected?

A. No.

Q. In this egg-candling room of Nye & Nissen down at Townsend Street, it is true, is it not, that unlike the one on Missouri Street, assuming the jury

(Testimony of Lt. Col. Pearl Hugh Hand.)

box is the candling room and that we are outside of the candling room here, that there was up about eye level something like a transom that went the length of the candling room, and which could be opened and when it was opened it formed a shelf, isn't that correct?

A. I don't remember exactly how it was.

Q. But you remember the plant on Missouri Street that exists there now? A. Yes.

Q. In that plant there are isolated transoms that let the air in in the new plant, do you remember that? A. No.

Q. You know there is some form of ventilation in front of the egg candlers?

A. In the new plant?

Q. Yes. A. Yes.

Q. In the old plant is it not a fact that assuming the egg candlers sit where the jury is, they had in front of them a shelf upon which eggs that were to be candled would be pushed through?

A. Yes.

Q. It was the practice, was it not, that the case to be pushed through by the front end so you could identify the case as it came in? A. Yes. [585]

Mr. Faulkner: Q. As you stood there in that candling room with this transom which opened down to form a shelf, a man of your height had no trouble in seeing everything in front of him, is that correct?

Mr. Pratt: He has testified he did not remember the matter of the so-called transom, and the question predicated upon such a transom is entirely improper, I submit.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Mr. Faulkner: I submit the objection.

The Court: Read this question.

(Question read.)

The Court: He may answer.

The Witness: A. No.

Mr. Faulkner: Q. Do you remember when you were in the candling room on Townsend Street whether you could see out or not?.

A. If I picked up the curtain and looked out through where the eggs came in, yes.

Q. If you did that, Colonel, to see out, you would have to lean down and look out like that, wouldn't you? A. Well, not quite that low.

Q. Colonel, how many times were you in that candling room on Townsend Street?

A. I don't remember.

Q. Would a hundred be a fair estimate of being the minimum?

A. I wouldn't have any way of recalling the exact number.

Q. Would fifteen be a minimum?

A. I would say so, yes.

Q. You recall that the egg case is right in front of you and that [586] above the egg case is your candle light, is that right, the pipe with the candle in? A. Yes.

Q. I would have to go like that (indicating), but right above where my eyes would be wasn't there an opening in that candling room that went right out there? A. I don't remember.

Q. You don't remember that?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. I have been in so many of them I don't remember any particular one.

Q. How many shelves were there in the front of this candling room?

A. There was a small shelf where we could lay papers and egg trays. The candling light was fastened beyond—I would say it was about——

Q. I mean on the outside, Colonel. Excuse me.

A. I don't remember on the outside.

Q. They had one shelf where they shoved the eggs through?

A. I believe they extended some distance on the outside, approximately as far outside the room as it did inside.

Q. Colonel, wouldn't this be about the way you would describe that: Take an ordinary platform wide enough to hold two cases of eggs, at right angles to the length of the platform, and if you imagined a partition coming up, that would be about the type of platform that was on this side, outside the candling room, and a similar platform inside?

A. Yes.

Q. So the method was to put a case of eggs here; it had a curtain and you would draw them in or they would shove them in, and there was room enough for them to sit here? A. Yes. [587]

Q. Do you remember at the Nye & Nissen plant on Townsend Street they had a higher platform where girls put their gloves, their lunch, and things like that, and things would be scattered around?

A. On the inside?

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. No, we are still outside.

A. This was inside that I remember that.

Q. That would be around the booth like?

A. Yes, around the interior.

Q. They would have a little shelf with the personal belongings of the candlers, who were usually women, is that right?

A. I don't remember what they put up there; maybe their lunch, a coffee cup, or something of the sort.

Q. On the outside do you remember any form of ventilation from that candling room or any opening whatever between the inside of the candling room and the outside passageway? A. No.

Q. In the year 1941 you have described a method of candling eggs and inspecting the eggs. Now, you would take 5 per cent in the ordinary case, Colonel, isn't that right? A. Yes.

Q. There are certain minimum requirements that you always take, like if it was 50 cases you would have to take three, is that it, or at least two, or something like that? A. Five per cent.

Q. Aren't there some minimums when the quantities are low, like 10 cases of eggs?

A. Take 5 per cent, and then if we run into trouble and find eggs that are improper, we take another 5 per cent. [588]

Q. The general practice was 5 per cent at all events? A. Yes.

Q. After you had candled and inspected the eggs and assuming the eggs were passed by you,

(Testimony of Lt. Col. Peart Hugh Heidt.)

you would have the cases stamped, am I correct?

A. I would stamp the cases.

Q. The main with you? A. Not always.

Q. I understood you always did your own stamping. That is what I understood you to say in this court room, that you never let go of your stamp, that you always did your own stamping.

A. I didn't let any of the employees do this.

Q. That is what I meant?

A. Of the particular concern of which I was making inspections.

Q. I mean if you were there with an assistant, a driver, or somebody under you, you would let him stamp them, is that right?

A. In 1941?

Q. Yes. A. No.

Q. Would you stamp them yourself?

A. At that time, yes.

Q. Would the Colonel stamp, too?

A. Yes, absolutely.

Q. Would you stamp together?

A. It all depends on whether I would be directed to stamp them or not.

Q. You take the Colonel's direction at all events? A. Most assuredly I do.

Q. At all events, when you were in charge or when you were the subordinate, when you were out at the plant of Nye & Nissen, both you and Colonel Kielsmeier hung onto your own stamp and stamped your own cases, either yourselves or with whatever men [589] that were with you?

A. Within the armed forces, yes.

Q. I mean the men that were with you?

A. In the military, yes.

Q. You described, Colonel, a certain procedure that you followed in respect to cheese, and then you described a procedure followed in connection with the cutting and weighing of butter. Now, in the years 1941 and 1942, in addition to being in the plant of Nye & Nissen on eggs, you were in there on butter, were you not?

A. Yes.

Q. With Colonel Kielsmeier; am I correct in that? A. Yes.

Q. By the way, do you know where Colonel Foster is right now?

A. Yes, he is retired and living in San Francisco.

Q. In the inspection of butter you would detail a part of that—and I want to cover the early part as fast I can—in other words, there was a butter room at both the 17th and Missouri plant and at the Townsend Street plant, is that correct? A. Yes, a very nice room.

Q. A what?

A. A very nice room at the new plant. It was very modern.

Q. The plant at 17th and Missouri is one of the finest, most up to date egg plants there is today?

A. Yes, I would say it is a very, very fine plant.

Q. I think the equipment, Colonel, is a little bit newer or [590] up to date in the butter room at 17th and Missouri than it was down at Townsend Street, isn't that right?

A. Yes, it is modern equipment.

Q. In the process of cutting butter and inspecting butter on an Army order, that butter is practically all inspected and cut in the presence of an Army man, is it not?

A. It is supposed to be; yes.

Q. I mean and generally it was, isn't that correct? A. As far as I know, yes.

Q. And of course, all you could testify to is what you observed yourself, but is this not true, that the method of determining the weight of butter, the width of the butter that comes out of the nozzle, if that is a correct term, but I am told this always remains the same, that is, in the cutting process, isn't that right?

A. Yes; it is the amount of moisture in butter that determines the weight.

Q. And also they have a gadget on that nozzle that adjusts the width, the depth, isn't that right?

A. I believe that is correct, on that machine, yes.

Q. When the butter comes through the nozzle in the plant at Townsend Street it would be cut with an instrument that had wire stretched across and it would be cut into the prints desired, isn't that right?

A. Yes, one-pound prints.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. And then they would be weighed and wrapped in tissue paper [591] or butter paper, and in the course of that proceeding the Army inspector, assuming you are the one on the job, you would weigh maybe every 10th, 20th or 30th print of butter, isn't that right?

A. Yes, I had no reason to——

Q. If the butter was off, they had a machine that could adjust that, isn't that right?

A. Yes.

Q. In other words, the same aperture that will take a certain type of butter will cause that type of butter to weigh one thing, and the same opening in the nozzle will take another type of butter through it and will weigh a different weight, won't it? A. That is right, yes.

Q. You have already, I assume, before that butter goes through that butter room, you have already tested the qu ty?

A. Yes, it has been graded.

Q. At the time you are testing that quality, or, rather, after you have tested the quality, after the prints have been made, they are wrapped up and they are put in cases; that is correct, is it not? A. Yes.

Q. Ordinarily 30 and 60-pound cases?

A. Yes.

Q. Now, those cases are likewise weighed, aren't they, Colonel? A. Not to my knowledge, no.

Q. Wasn't it the general practice to weigh the cases both in the butter room and weigh them sometimes outside?

A. Not at that time by the Army, no.

Q. Was the only test in the weight of the butter in weighing [592] every 20th print?

A. They were weighed again when they were delivered to the post, camp or station by the Quartermaster Sales Officer.

Q. Then they took the tare of the box and so much for each piece of paper?

A. The inspectors at that time were only charged with quality condition, the type, class and grade, not with weight. That was determined at the time it was paid for by the Army.

Q. Sometimes the weighing would be in the plant also, would it not, under certain circumstances?

A. Not by an inspector of the Veterinary Corps, no.

Q. The weight would be——.

A. At that time.

Q. Would it be at the point of delivery? It would be at the point of delivery?

A. Yes, by a Quartermaster Sales Officer.

Q. Colonel, during the whole period of time of 1941 and 1942 and right up to the present time the inspections made of butter, eggs and cheese in the plant of origin is a complimentary inspection, is it not?

A. No, it is an official inspection.

Q. Is not this true, that the rules and regulations provide specifically that the inspection at the point of delivery is to determine whether a con-

(Testimony of Lt. Col. Pearl Hugh Hand.)

tract for the fulfillment of orders for butter, eggs and cheese has or has not been fulfilled? Isn't that the specific requirement of the regulations?

A. No, it is not.

Q. Will you show me some regulation to the contrary, and I will [593] give you all the regulations that you brought in?

A. I do not believe there are any specific regulations covering it that I recall at this time. It goes far beyond that. I can answer the question.

The Court: You may answer it in your own way.

The Witness: In the procurement of inspection and payment of food products for the armed forces there are four factors that enter in: there is, first, inspection for quality and condition and edibility of a food product. Then it must meet the contract requirements for the product purchased. That is written in the contract. So first it is contracted for by the Quartermaster Corps, the Field Quartermaster in Chicago and subsidiary market centers, and then the Veterinary Corps, which is a department of the Medical Department, a division or corps of the Medical Department—there are numerous corps in the Medical Department—are charged with the inspection of all food products of animal origin. That is to get edible food. That is for the protection of the health of troops. That is our first thought in mind, getting edible food. And also for type, class and grade, to see that the

(Testimony of Lt. Col. Pearl Leigh Hand.)

delivery meets with the contract requirements. Then it is delivered to post, camp or station. It is accepted again by a division of the Quartermaster Corps, who accept it, record it, make the necessary memorandums out, and then it is again recorded and sent to the sales officer, to the Finance Department by the sales officer, and it [594] is paid for. There are four agencies that enter in. Not any one agency contracts, inspects, accepts and pays for an item—an article of food or an item of food.

Q. Is that your full explanation on the subject matter whether there is a direction, a standard just as specific as the description of the standard of a AA egg?

A. There is in existence, put out by the Quartermaster Corps, I believe.

Q. What does it require?

A. It requires that the Veterinary Corps inspect the purchase of all food products of animal origin purchased for the armed forces.

Q. Is there a regulation as clear and as explicit as the regulation respecting the determination of what is or is not a AA egg in respect to whether the inspection at the point of delivery is final?

A. There are four food items that can again be inspected at delivery.

Q. Colonel, is there a regulation that governs the inspection of eggs, butter and cheese for

(Testimony of Lt. Col. Pearl Hugh Hand.)

the Army to the effect that the inspection at the point of delivery is final?

A. There are directives, but not specifications.

The Court: Tell the jury.

Mr. Faulkner: Q. Yes, there is a directive?

A. I just wanted to know if I could answer it that way.

Q. Who issued the directive?

A. It was written by General McKenzie, the Office of Quartermaster General, who was in charge of field headquarters in Chicago. That is the headquarters for [595] the procurement of all food products for the armed forces, and it was written in conjunction with General Harding, who was the Quartermaster General at that time, under the auspices of General Somervell, who is head of the Army Service Forces.

Q. Then we do know there was a directive that obtained and was binding on the armed forces, the Veterinary Corps, that the inspection at the point of delivery is final, isn't that right?

The Court: Q. Is that directive in writing?

A. It is pertaining—I tried to answer awhile ago—to perishable food products; we will say eggs, butter, cheese, milk, cream and ice cream.

Mr. Faulkner: Q. Then we have wasted—not wasted—but the time this morning on this subject matter may be finalized in this respect, that there is a written directive that is binding on the Veterinary Corps that the inspection at the point of delivery is final, is that right, in perishables?

(Testimony of Col. Earl Leigh Baird.)

A. For condition and quality only.

The Court: Q. Is that in print?

A. Yes.

Q. Where is that direct so the Jury may follow it?

Mr. Hippeli: Q. Do you recall if you have a copy of it in your briefcase?

Mr. Faulkner: I may be able to help.

The Witness: I do not have my station file with me. I am sorry. It is about this thick (indicating), but it is in there some place. I remember reading it a couple of years ago. [596]

Mr. Faulkner: I have it here somewhere.

Q. Did you ever see one of those, Colonel (handing a document to the witness)?

Mr. Hippeli: May I see it, please?

Mr. Faulkner: Q. Will you show it to Mr. Hippeli, Colonel, please?

A. This appears to be the part of any War Department contract entered into by the vendor. It is always I believe on the contract. It has to be made a part of the contract.

Q. In other words, Colonel, in the years 1941, 1940, and 1942, and from then on the method of supplying the Army Nye & Nissen was that there would be bids for special items like butter, eggs and cheese, and they would bid to fulfill the Army requirements, isn't that right?

A. What period was that again?

Q. Well, during part of that period, 1941, 1940 and 1942?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. Not in 1942. The Quartermaster Market Centers came into the picture.

Q. That is right, but in 1941 you bid?

A. In early 1940 and early 1941 there were bids let for 30-day periods, yes.

Q. In 1942 and from them on the Quartermaster Marketing Center was the department that cleared those orders, isn't that right?

A. They made the contracts with the vendors, yes.

Q. And the orders were done by purchase order contracts, isn't that correct?

A. Yes, purchase orders and contract numbers were issued. [597]

Q. Now, this is a normal part of that purchase order contract, as you saw and observed it, is it not, Colonel? A. Yes; that is it.

Mr. Faulkner: I offer it in evidence, your Honor.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit F.)

Mr. Faulkner: I would like to read it to the jury, your Honor.

The Court: Very well.

(Testimony of L. C. Peart [High Hand.])

Mr. Faulkner:

"Purchase Order
"War Department

"War Department
"QMC Form No. 308-A.

"1. Vendor to send itemized weight list with shipment.

"2. Army Veterinary Inspection at original for type, class and grade. Inspection at destination for quantity, condition and soundness only. When Army Veterinary Inspection is required at origin for type, class and grade, the Government reserves the right for these inspections to include all the manufacturing and packing processes and will not be restricted in any way.

"All boxes, packages, carcasses and cuts of carcasses will [598] be plainly marked with the net weight of the product. If the carcass or cuts of carcasses are unwrapped and not in boxes, they will be tagged showing the net weight. Individual pieces of hams smoked and bacon smoked will be marked with the net weight.

"All carcasses and cuts of meats shipped in muslin or paper wrappers will be plainly stamped with Veterinary Corps inspection stamp on both the meat and on the outside wrapper. Boxes and containers will be at least stamped on the outside containers.

"3. Subject to inspection as to quality and condition at destination.

"4. The Government reserves the right to in-

crease or decrease the quantity specified herein not to exceed 25 per cent during the life of contract.

"5. The above delivered price (or prices) include all transportation costs and accessorial charges.

"6. In connection with any shipment hereunder of one carload or equivalent or more, the shipper, at the time supplies are ordered for loading for oil, motor, or water transport will advise the consignee, at the address shown on the purchase order; and the Quartermaster Market Center, 248 Battery Street, San Francisco, California, by prepaid telegraph or teletype, the following information; car number or truck license number, contents, shipping date, [599] routing, arrival date, and purchase order number. This provision is not to be substituted for any other requirement; such as mailing bills of lading."

Mr. Faulkner: Q. Now, Colonel, in the year 1941 I understand that you had inspected, or, rather, you had observed a quantity of eggs out at the Presidio that appeared to have been inspected by the Quartermaster Corps or, rather, the Veterinary Corps at or about that time; and they were in a baker's bowl; do you remember that incident? A. Yes.

Q. When was that?

A. I believe it was in September, 1941.

Q. How do you fix the date?

A. As near as I can recollect.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. I mean how do you fix that date? Was there something that would cause you to pick September?

A. As near as I can recollect it was that time.

Q. Colonel, was your name on those cases?

A. Yes.

Q. That you had inspected? A. Yes.

Q. Was there a date, an Army inspection mark?

A. Yes.

Q. How long after that date was the incident when the baker had the bowl with the eggs and some of them were not so good?

A. I would say approximately two or three days.

Q. That is just your memory, isn't it, Colonel?

A. Yes.

Q. It might have been a week? A. No.

Q. What kind of eggs were you buying for the Army then, Colonel?

A. For Letterman General Hospital they were buying Specials.

Q. No, for the baker, for the man who had the eggs in the bowl; [600] what kind of eggs were you buying for them? A. Special eggs.

Q. Pardon me? A. Special eggs.

Q. Special? A. Grade AA, yes.

Q. Grade AA?

A. For patients for Letterman General Hospital.

Q. The incident I am referring to hasn't anything to do with Letterman General Hospital. It is a baker in a field kitchen and he has a bowl of eggs in September, 1941, and you said some of them weren't any good. What kind of eggs were you buying for that baker?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. This was in the pastry shop in Letterman General Hospital.

Q. Were both instances in the pastry shop that you referred to in your direct examination?

A. No, they were not.

Q. What incident was not in the Letterman General Hospital?

A. That was Headquarters Mess, Presidio of San Francisco.

Q. The Headquarters Mess, and the man had the eggs in the bowl?

A. Not at the Headquarters Mess, no.

Q. What?

A. Not at the Headquarters Mess no.

Q. The man in Letterman General Hospital had them in a frying pan and the man in the Headquarters Mess had them in a bowl, didn't he? We will find out about eggs accurately. Mr. Hippeli says just the opposite. Where did the man have the eggs in the frying pan?

A. They were being cooked that morning at the Headquarters Mess, Post Presidio, San Francisco.

Q. What kind of eggs were you buying for that man to cook? [601]

A. Nothing below grade Standard or Grade B.

Q. What were you buying? What was the standard egg that you were buying for the consumption of the soldiers at that time?

A. Standards, if I remember right.

Q. Standards?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. For that particular instance.

Q. That is the lowest grade egg fit for human consumption?

A. I wasn't buying them. They were being purchased by the quartermaster corps. I was only inspecting them.

Q. That is the lowest grade of egg fit for human consumption, isn't it? A. Yes.

Q. And that was what the Army was buying for the men? A. For the troops, yes.

Q. And that is the type of egg we have the bad eggs come out of faster than any other type, isn't that right? A. Yes.

Q. At that time what type of butter were you buying for the Army?

A. 92 and 93 score.

Q. You were buying 90 score butter, weren't you, Colonel, which is the next to the lowest butter fit for human consumption?

A. I wasn't buying butter.

Q. I mean you were inspecting it?

A. You are talking about procurement. You are talking the quartermaster corps. I am only a food inspector. I am not a procurement authority.

Q. The butter that the Army was buying and that you were inspecting in the year 1941 before the war—the eggs were the lowest grade fit for human consumption; isn't that a fair [602] statemen?

A. They were buying 90 and 91 score. No, I believe the butter is scored down as low as Grade C

(Testimony of Lt. Col. Pearl Hugh Hand.)

or cooking score, which is still fit for human consumption. 90 grade is still a pretty score.

Q. 89 grade is the lowest grade? A. No.

Q. I mean the lowest you can sell for human consumption?

A. I wouldn't say what you can sell.

Q. What score of butter is the lowest that a dealer is permitted to sell for human consumption?

A. Cooking grade.

Q. What? A. Cooking grade.

Q. What are they? What is the score for cooking grade of butter?

A. I would say it would be below 88.

Q. 88 or below?

A. Depending on the qualities of the butter. Now you are getting into technicalities involved in scoring butter. I can give them to you.

Q. There were three qualities of butter, were there not, for human consumption, like we would use on the table for a piece of bread? Weren't there? A. No.

Q. In the butter business generally, weren't there three general grades of butter?

A. At that time I believe butter was scored from 85 to 93, 93 being top grade.

Q. I am not talking about top grade; I mean in the industry, there were three qualities: first quality, second quality, and third quality?

A. Speaking of quality involves the State regulations, State laws? I wouldn't say. [663]

Q. Just generally. A. I wouldn't say that.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Just generally in the butter business there were three qualities of butter?

Mr. Hippeli: I object to that as immaterial, your Honor.

The Court: In any event he answers he wouldn't say.

Mr. Faulkner: He wouldn't say?

The Witness: I am not familiar with the State laws at that time.

Mr. Faulkner: Q. In the incident out at the Presidio, where these cases bore your name and the eggs were not so good in the frying pan, speaking of the Headquarters Mess——

A. Post Presidio.

Q. Yes.

A. I remember it very definitely. Don't worry. I got taken over the coals plenty. I was the one who paid for it. Don't worry about that.

Q. Have you anything to add in this informal manner?

A. I just wanted to get straight what you are talking about.

Q. At the Headquarters Mess you had inspected some standard eggs for the Army, is that right? A. Yes.

Q. And they bore your stamp?

A. Yes, they did.

Q. And then you had an incident where the eggs were not very good, is that right? A. Yes.

Q. And then you inspected every egg in the case, didn't you?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. Yes, took out all bad eggs.

Q. When you were down on the waterfront doing the work for [604] the FBI, why didn't you inspect every egg in the case?

A. I wasn't under orders to do so.

Q. When you were over at the Letterman Hospital, eggs that went to the Letterman Hospital were better eggs than they were buying for the general run of the Army, isn't that right, in 1941?

A. Yes.

Q. When was the incident in Letterman Hospital?

A. It was about two or three days after the incident at Headquarters Mess.

Q. Did you observe whether the eggs over there had been inspected by you?

A. Yes, they had.

Q. Did you buy any eggs for the Letterman Hospital?

A. No, they were procured by the sales officer, Letterman General Hospital.

Q. How is it that you inspected them?

A. I was ordered to. I was assistant to the attending officer who had charge of that inspection of food for Letterman General.

Q. Was it your practice to inspect for Letterman Hospital? A. Yes.

Q. During that whole period?

A. Yes, when ordered to do so.

Q. At the plant of Nye & Nissen?

(Testimony of Lt.-Col. Percy Hugh Hand.)

A. When they had the order for Letterman, yes.

Q. In Letterman Hospital, that is where the fellow had the eggs in the bowl?

A. In the pastry shop, yes.

Q. Yes, in the pastry shop, yes. What quality of eggs qualified for use in the pastry shop?

A. He was using Standards. [605]

Q. I didn't ask you that. I asked you what type of egg qualified for use in the pastry shop.

Mr. Hippeli: I object to that as immaterial. It is what he did at the particular time, what quality of eggs was there at the particular time.

Mr. Faulkner: I submit the objection.

The Court: Read the question, Mr. Reporter.

(Question read.)

The Court: The objection will be sustained.

Mr. Faulkner: Q. Do you know what quality of eggs are bought for use in a pastry shop?

Mr. Hippeli: Same objection.

The Court: For a pastry shop? The objection will be sustained.

Mr. Faulkner: Exception to each ruling, your Honor.

Q. Did the eggs bear a grade? A. Yes.

Q. What grade did it bear? A. Standard.

Q. Did the Veterinary Corps stamp at that time show a grade? A. No, it did not.

Q. Isn't this a fact, that that is the typical——

Mr. Hippeli: May I see that, please?

Mr. Faulkner: Q. Isn't that a typical Veterinary Corps stamp that was in use in 1941?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. No.

Q. That is not? A. No.

Q. Now, then, what departures are there from that, Colonel? [606] Where is it wrong in any material way in 1941?

A. There wasn't a number here. This is the stamp number of the inspector making the inspection. This may stand for the Service Command. It may stand for any given area.

Q. It was not used in 1941, is that right?

A. Maybe in some instances. Not in the instance you are speaking of. There is a large "VC" in the center of the stamp. Then there is the date in this part of the stamp, and the name at the bottom of it.

Mr. Faulkner: May I see the stamp?

The Court: We will have a recess. The jury may be excused.

(Recess.) [607]

The Court: Proceed.

Mr. Faulkner: Q. Colonel, the stamp that you brought in here, or the replica of it, is that the type stamp they were using in 1941?

A. Yes, I believe it was.

Q. No qualify is indicated on that stamp, is there? A. No.

Q. It is merely your recollection of what the type of eggs were, is it not? A. Yes.

Q. Withdraw that. What type of eggs were

(Testimony of Lt. Col. Pearl Hugh Hand.)

they that you saw in the Pastry Shop in the Presidio?

A. As near as I remember they were standards.

Q. How many trade eggs are permitted in a case of Standards, what percentage?

A. Approximately 36.

Q. 36. That would be three dozen out of 30?

A. Yes.

Q. Isn't it 20 per cent?

A. I don't recall the percentage.

Q. Just as the Standards will turn into a bad egg quicker, ordinarily than an A, so that a trade egg would turn into a bad egg quicker than a Standard? A. Not always, no.

Q. The lower the quality the more likely you are to have bad eggs, isn't that right?

A. Not if they are natural eggs, no.

Q. Then the quality of the egg hasn't any relation whatever to bad eggs, is that right? Withdraw that. In other words, is there any relation between a bad egg and the quality of a group of eggs; is there one type more likely to turn than another?

A. Dirty eggs that have been artificially cleaned.

Q. Will turn regardless of how they are graded?

A. And if they are Grade C, naturally.

Q. What percentage of the eggs in the incident relating to the mess hall did you find were poor eggs, bad eggs?

A. I would consider approximately 35 taken out of the cases were bad.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. You testified to a percentage. Do you recall that? A. 10 per cent.

Q. What? A. 10 per cent.

Q. In the Letterman Hospital what was the percentage? A. 5 per cent.

Q. How many cases of eggs were involved?

A. Three in each case.

Q. Three in each case? A. Yes.

Q. In connection with the matter of whether or not an inspection in the ordinary transactions with the Army—you brought in here this exhibit, U. S. Exhibit 52. That is more than a directive, is it not?

A. It is a specification for standards.

Q. Will you please read to me the method of inspection and test provided for in the specification which appears on page 3, subdivision (f)?

Q. Is that (f)-1 that you are referring to?

A. Pardon me.

Q. (f)-1.

A. "Inspection shall be made at point of delivery by the receiving agency unless otherwise specified."

Q. So the specification under which you operated particularly required inspection at the point of delivery and the directive [609] under which you operate likewise required inspection as to quality and condition at the point of delivery; isn't that right? A. Yes.

Q. In the years 1941 and 1942, confining ourselves to those years, it was uniform that the mer-

(Testimony of Lt. Col. Pearl Hugh Hand.)

chandise inspected in the plant of Nye & Nissen was again inspected at the point of delivery; isn't that right? A. Yes.

Q. The inspection that you described at the Presidio where the truck of Nye & Nissen would come and either be unloaded by an enlisted man or maybe the driver and then inspected again would be generally the method of inspection followed for eggs at the point of delivery?

A. I didn't understand.

The Court: Read it.

Mr. Faulkner: Q. Do you remember on your direct examination you described an incident where eggs were taken out to the Presidio to a loading dock and they would be unloaded, or eggs would be selected from the truck and inspected and then it would be unloaded. Do you remember that?

A. Which question should I answer?

Q. Do you remember that subject?

The Court: If you don't understand the question say so.

The Witness: There have been two questions.

Mr. Faulkner: Do you not understand what I am talking about? I don't want to confuse you, Colonel.

Q. Do you remember describing an incident relating to the [610] inspection at the point of delivery in your testimony on direct examination?

A. Yes.

Q. I think you only described that upon one occasion; isn't that right?

(Testimony of Lt. Col. Pearl Hugh Hargis.)

A. I don't recall how many occasions.

Q. Well, will you describe for me, will you please describe for me just as accurately and detailed as you can the ordinary procedure followed on the inspection at the point of delivery of eggs during the years 1941 and 1942 and thereafter?

A. The delivery was made by the contractor usually in his own truck. It would back up to the dock. The inspectors would meet the truck, go over the entire lot of eggs on the truck, select 5 per cent of the cases and an enlisted man, generally a man who worked in a labor battalion, an enlisted man around the place would help the truck driver unload the cases of eggs unloaded for inspection. Then they would be placed on a small push truck, taken into the field commissary, and one hundred eggs from each case would be candled and graded the same as it was at the plant.

Q. If they passed the eggs became the Army's, and if they didn't pass they went back to the shipper, is that right? A. Yes.

Q. Was that the typical method of inspection during those years by the Army? A. Yes.

Q. Have you ever seen any variation from it?

A. Not that I recall, no. [611]

Mr. Faulkner: That is all. Oh, did you bring the butter regulation and the cheese regulation?

Mr. Hippeli: Did you have any butter regulations?

The Witness: I am sorry, I did not understand that Mr. Faulkner wanted the butter specifications.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

The Court: Have you got the butter specification, yourself?

Mr. Faulkner: Yes, your Honor. Well, we will identify ours that we had in our shop and I will point it out to Mr. Hippeli, your Honor.

The Court: Very well.

The Witness: They are public property.

Mr. Faulkner: In other words, I would like to retain the single one that I have.

The Witness: They are five cents apiece.

Mr. Faulkner: But they come out in little pamphlets like this?

The Witness: Yes. It is standard stock catalog.

Mr. Faulkner: Do you recognize those as the standards governing cheese during the dates that they bear?

The Witness: Yes.

Mr. Faulkner: May these be marked as Defendants' Exhibits for Identification, the white one with a number and the two green ones with a letter?

(The documents were marked Defendants' Exhibits G, H and I for Identification.) [612]

Mr. Faulkner: While you are on redirect examination we will look at this and then will identify the one we can use.

The Court: Very well.

Redirect Examination

Mr. Hippeli: May I have Defendants' Exhibit F, please?

Q. Showing you Defendants' Exhibit F, I will

(Testimony of Lt. Col. Pearl Hugh Hand.)

ask you if that addendum to that purchase order is only an addition to the Army purchase order?

A. Yes.

Q. Do you know whether or not those similar conditions are contained in War Shipping Administration purchase orders or other purchase orders which may be subject to inspection by the Department of Agriculture? A. I do not, no.

Q. Do you know whether the United States Department of Agriculture regulations permit delivery of eggs that are lower than grade at destination?

Mr. Faulkner: We object to that as asked and answered.

The Court: Answer.

Mr. Faulkner: Exception.

A. I don't recall exactly whether it does, or not.

Mr. Hippeli: Q. Is it the custom in the trade for one engaged in the egg-selling business to sell eggs in a case which bears the label of another?

A. No.

Q. Directing your attention to your inspection dates, in refreshing your recollection in testifying in connection with those inspection sheets, was your testimony based upon your own [613] notations upon those sheets? A. Yes.

Q. If the 50 cases of eggs which were inspected on the Henry White were graded AA on the said day on which you inspected them, could they have been lowered to the grade at which you found them?

Mr. Faulkner: We object to that as calling for an opinion and conclusion of the witness. The testimony is clear, your Honor. The inspection is of

(Testimony of Lt. Col. Pearl Hugh Hand.)

samples, five cases were selected under the regulations and that would leave 45 cases not inspected. His opinion and conclusion does not bind us.

The Court: Objection sustained. Develop the facts, whatever they may be.

Mr. Hippeli: I would like to argue that, if the Court please.

The Court: Well, just a moment. Let's allow the reporter to read the question.

(Question read.)

The Court: I will sustain the objection.

Mr. Hippeli: Q. Would a lot of eggs change in grade in one day's time? A. No.

Mr. Hippeli: That is all, your Honor.

Recross Examination

Mr. Faulkner: Q. Colonel, suppose you took 50 cases of eggs out of a refrigerating plant and put them out on a dock on a sweltering hot day. What will happen to the eggs at the [614] end of the day?

A. Are they oil-processed?

Q. Eggs, the same kind of eggs Mr. Hippeli asked you about when you said they wouldn't change in one day's time.

A. I would have to have the eggs defined before I could even offer an opinion.

Q. Mr. Hippeli asked you the question: "Will eggs change in one day?" You said no. Now, at that time you did not require the eggs to be defined, did you? A. No.

Q. Now, I will ask you, if you take eggs out of

(Testimony of Lt. Col. Pearl Hugh Hand.)

an icebox under the proper temperature for the keeping of eggs and you put them down on a dock on a sweltering hot day and leave them there during the sunlight, what will happen to the eggs, the next day what will their quality be?

A. I couldn't say for sure what the quality would be.

Q. They wouldn't improve, would they, Colonel?

A. Naturally not under the heat.

Q. They wouldn't improve, would they?

A. No, they would certainly not under direct sunlight and heat. In San Francisco it wouldn't be so bad.

Q. Well, there have been occasions when we have taken our coats off in the evening in May?

A. I have never seen the time.

Q. And as late as October and November, your Honor. In addition to the heat in the sun, what has the effect of moisture on eggs—what would moisture do to eggs?

A. If they are [615] oil-processed it wouldn't hurt them particularly. The pores of the eggs are sealed by the oil.

Q. Suppose they are not oil-processed?

A. It would collect mold spores from the air and form a media for mold to grow on the eggs.

Q. There isn't any question that an egg is a perishable product, is there, Colonel?

A. Very, very much so, yes.

Q. Very much so? A. Correct.

Q. There isn't any question that particular con-

(Testimony of Lt. Col. Pearl Hugh Bland.)

ditions have very speedy effect on eggs isn't that right, in connection with their quality?

A. Yes.

Q. I am producing my record on the assurance of counsel for the Government that they will duplicate it, and I will ask you if you recognize that C-B-801a? A. C-B——

Q. Is there an "a" after it?

A. A small "a".

Mr. Hippeli: Are those available at the Presidio?

The Witness: I think it would be better to obtain it from the U. S. Department of Agriculture. I robbed the files of the Station Veterinarian and he was a little alarmed about it, and he wanted me to replace it. You can buy them for a nickel apiece.

Mr. Faulkner: Q. When you robbed the files, it was petty larceny because you only brought in one paper.

The Witness: He didn't like it. I only know that.

Mr. Faulkner: May I withdraw it until you replace it? [616]

Mr. Hippeli: I will do whatever you want.

Mr. Faulkner: Is that agreeable to your Honor?

The Court: Yes.

Mr. Faulkner: Q. Is that the butter regulation effective up until November, 1937?

A. No, I believe it was issued on 3 November, 1937. It superseded——

Mr. Faulkner: From 1937 on until revoked?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. Yes. It superseded specification 801, March 31, 1931.

Q. Do you know whether these regulations were superseded? A. I assume they were amended.

Q. You don't know? A. No.

Q. Have you ever seen the specification before?

A. Yes.

Q. Now, I will ask you the question I asked you a minute ago. Isn't butter divided into three classes?

The Court: Direct his attention to it.

Mr. Faulkner: The first page; right here, Colonel.

A. I believe you referred to the trade, Mr. Faulkner. This is a definite Federal specification.

Q. "Butter shall be such of the following grades, as may be specified in the invitation for bids: Grade A—Butter, sweet cream, scoring not less than 93. Grade B—Butter, scoring not less than 92. Grade C—Butter, scoring not less than 90." Isn't that the usual method of referring to butter?

A. You referred to the trade, and it is a State law; different State laws vary according to the grade of [617] butter.

Q. I referred to three classifications and your regulations refer to three classifications, Grade A, Grade B, and Grade C.

A. That refers to the procurement of butter, not to the grading or the standard of State law specifying and setting up certain grades. That is a Federal specification for procurement.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. Is there any grade of butter lower than C?

A. That is cooking grade; not to my knowledge, no.

Q. In other words, Grade A butter, according to the regulation, Grade A butter is sweet cream, scoring not less and 93 and Grade B scoring not less than 92, and Grade C butter scoring not less than 90?

A. That is not the procurement specification.

Q. That is how you were ordering, by procurement specifications?

A. I wasn't doing the ordering.

Q. That is the type of butter you were inspecting? A. At that time, yes.

Q. Grade A, Grade B and Grade C?

A. 93, 92, 91 and 90 score.

Q. Were you ever inspecting any grade below a C? A. We were not specifying C grade, no.

Q. That is all you were inspecting in 1941 when you were inspecting butter for the Army, wasn't it, it was Grade C?

A. The existing regulations at that time; Grade C butter is cooking grade butter.

Q. Well, in 1941, the Army was buying for the men 90 score butter, wasn't it? A. Yes. [618]

Q. That is Grade C?

A. According to the specification.

Q. Isn't that the specification you were grading under in 1941?

A. Yes. It was also purchased by score, 90, 91, 92 and 93.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. But the general type butter was the Grade C butter?

A. It was not procured as such if I remember correctly.

Q. Well, it was 90 score butter?

A. Yes, nothing below 91.

Q. 90 score butter is defined as Grade C?

A. Under that particular specification.

Mr. Faulkner: We ask that be marked for identification.

(Pamphlet C-B-801a was marked Defendants' Exhibit J for Identification.)

The Court: Is that all from this witness?

Mr. Hippeli: That is all, your Honor.

The Court: Step down. Call your next witness.

Mr. Pratt: Colonel Hand would like to remain in the court room. We do not expect to call him again in our case in chief. Of course, there is a possibility he might be called during rebuttal. We would like to have him permitted to remain in the court room.

Mr. Faulkner: On the asurance of counsel that he is merely there in that capacity I have no objection.

Mr. Pratt: He might be called in rebuttal; I don't know. [619]

HENRY LESTER PINEDA,

a witness called by the Government having been previously sworn, testified as follows:

Direct Examination (Resumed)

Mr. Hippeli: Q. When you were last on the stand, Mr. Pineda, you were testifying to a delivery of butter in the summer of 1940 down on Pier 16, in San Francisco; isn't that correct?

A. Yes.

Q. You recall that the Nye & Nissen truck drove on the pier, you were there when Mr. Andrade, Nix, Mr. Berman and Mr. Smiley, you were unloading the truck? A. Yes.

Q. Mr. Smiley, I believe, was on the truck passing the cases of eggs down to you and directing you to place some cases down and place other cases on top? A. Yes.

Q. Will you take it from there and explain what further happened on that occasion?

Mr. Faulkner: We ask that the witness be propounded a question, your Honor, so we can make an intelligible objection.

Mr. Hippeli: Q. Where was Mr. Smiley on that occasion?

A. He was on top of the truck, his truck, giving us the cases of eggs.

Q. To whom was he giving the cases of eggs?

A. To Tom——

Q. Use the last name.

A. Andrade, Mr. Berman, and myself, and Mr. Nix. [620]

(Testimony of Henry Lester Pineda.)

Q. How was he giving you the cases of eggs?

Mr. Faulkner: Your Honor, at the time of the original testimony your Honor will recall I made certain objections on the ground that the defendants were not present, that it was incompetent, irrelevant, and immaterial, and hearsay as to the defendants, and not within the issues of the case. I think that original objection is adequate for all purposes. I would like to renew that objection in connection with this incident at this time.

Mr. Hippeli: At that time Mr. Pineda testified that one of the defendants was present. I think your Honor overruled Mr. Faulkner's objection and limited his testimony to the defendant present.

Mr. Faulkner: I want to be sure the same ruling applies, your Honor.

The Court: Very well. Proceed.

Mr. Faulkner: Exception. [621]

The Witness: Mr. Smiley would slide the cases over to the end of truck, and we would pick them off the end of the truck and walk over to the piles that we were attempting to stack on the floor, and the cases he wanted down, he would tell us which ones he wanted down, and we put them down three high on the deck and then we would top them off two high and certain cases around. Later on the pile was getting kind of big, and all we did was five high. There would be the cases that he wanted in the center of the stack. Five high would be no tops.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: Q. Did you observe any markings on the cases you were loading at that time?

A. No, but the stencilling—Smiley told me the way the stencilling was placed on top——

Mr. Faulkner: We object to what Mr. Smiley told Mr. Pineda. It is hearsay.

Mr. Hippeli: Q. Did you see a stencil on the cases which were unloaded? A. Yes, on top.

Q. There are stencils on each case which was unloaded? A. Yes.

Q. Were the stencils placed on each case in the same manner? A. No.

Q. Will you explain the different manner in which the stencils appeared on the cases?

A. Some cases had the stencils placed running parallel with the top of the cases, and others had a sort of kitty-cornered.

Q. How were the cases stacked on the pier with respect to the [622] stencils appearing on top?

A. The kitty-cornered cases were the top cases.

The Court: You answer with some rapidity. The reporter has to get it down. You can help him by raising your voice.

Mr. Hippeli: Q. Would you repeat your answer, please, Mr. Pineda, so the reporter may get it?

A. The cases that were stencilled running along the top of the case of eggs, they would be the bottom cases, and the ones that were stencilled sort of kitty-cornered, they would be the sample cases, what we call the sample cases.

(Testimony of Henry Lester Pineda.)

Q. You did observe Mr. Berman stacking them in that order?

A. Yes, the whole four of us on the floor there.

Q. Did Mr. Moncharsh approach you when you were unloading the truck?

A. Yes, he came down about—oh, I guess about 45 minutes or an hour after we started working. Then Tommy got on top of the truck and wanted to help Smiley. Mr. Moncharsh told him to get off the truck, that was Smiley's truck, and he knew where the cases were.

Q. Who was Tommy?

A. Tommy Andrade.

Q. What was it Mr. Moncharsh said?

A. He told Tommy to get off the truck, that was Smiley's truck, and he knew where the cases were.

Q. What happened then?

A. So Tommy got off then.

Q. Use his last name, please?

A. Andrade got off and Smiley kept giving us the cases the way he was at the beginning. At [623] the time Mr. Berman said, "There are too many men here. I have work to do at the plant." So he told Mr. Moncharsh he was going back to the plant.

Q. What did Mr. Moncharsh say?

A. He said it would be all right, and he told Tommy Andrade when he finished unloading to take me back to the plant and Jimmy Nix would take care of the inspectors.

(Testimony of Henry Lester Pineda.)

Q. Did Mr. Moncharsh observe you unloading the cases in the manner in which you described?

A. Yes.

Q. Do you recall a particular lot of eggs which was inspected by Colonel Hand?

A. Yes, Colonel Hand came down to the plant quite a few times while I was working there.

Q. When was this particular occasion?

A. Well, I remember him about the winter of 1941.

Q. Do you recall what purchase order was being made out?

A. It was an Army order, and I later found out it was a CC order.

Q. Do you recall the grade or character of eggs which were required by that order?

A. I think it was a fresh egg.

Q. Do you recall a particular lot of eggs being received at the plant at this time?

Mr. Faulkner: I ask that the answer go out as not responsive.

The Court: Read the question.

(Question read.)

Mr. Faulkner: "A fresh egg" is not a grade of egg. [624]

The Court: That is the answer. Let the question and answer stand.

Mr. Hippeli: Will you read the last question?

(Last question read.)

A. Yes, around this time we used to go down to the ice house and pick up some storage eggs and

(Testimony of Henry Lester Pineda.)

bring them up to the ice house, then I would help——

Mr. Faulkner: We object to all this as too general and not within any of the charges of the indictment, nor in any count of the indictment, and hearsay as to the defendants.

The Court: Lay the foundation for the testimony.

Mr. Hippeli: These questions are preliminary to what the defendants did with this particular order.

The Court: He is entitled to the time and place and persons present.

Mr. Hippeli: The time we have established as the winter of 1941. We are talking about a particular Army order for fresh eggs.

The Court: What order?

Mr. Hippeli: Q. Do you recall what the order was? A. No.

Q. At the time in the winter of 1941 do you recall a particular lot of eggs being brought into the plant in the presence of any of the defendants?

A. Yes.

Q. Who was present?

A. There was Mr. Menges and Mr. Goddard.

Q. What occurred when this lot of eggs was being brought into the plant?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial unless it relates to an order filled with the Army, and the order is

(Testimony of Henry Lester Pineda.)

identified so that the defendants may have at least a reasonable chance of meeting the charge.

Mr. Hippeli: I am identifying a lot of eggs that was delivered in the presence of the defendants in this winter of 1941, in which period of time the witness has fixed the delivery of the order.

The Court: What order?

Mr. Hippeli: Q. Do you recall approximately how many eggs were in that lot?

A. In this lot there was—we used to pick up from the ice house from 50 to 75 cases of eggs.

Q. When this lot of eggs was delivered at the plant in the presence of Mr. Menges and Mr. Goddard do you recall approximately how many cases were delivered to the plant at this time?

A. About 75.

Q. Do you recall whether the cases of eggs were cold storage or not? A. Yes, they were.

Q. How do you know they were cold storage?

A. Well, they had a cold storage label on the side, sort of a little piece of cardboard that cold storage people put on the cases of eggs, and later when I was told to open it, why, the cases were cold and they started to sweat. [626]

Mr. Faulkner: All these things are hearsay as to the defendants, your Honor.

The Witness: I know a cold storage egg when I see it, especially when it comes out.

Mr. Faulkner: What does it relate to? Cold storage eggs are sold all the time. They are like money. Eggs are not identifiable.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: I am attempting to identify the particular lot of eggs as well as the witness can recall it. He has recalled approximately 75 cases of eggs that were brought into the plant. He has stated that they were brought in when Mr. Menges and Mr. Goddard were present. He stated that he observed that these particular cases were cold storage eggs, and he has told how he knew they were cold storage eggs. I believe all this testimony identifying a lot of eggs took place in the presence of the defendants. That is when the witness was there. That is what the witness observed. He observed that in the presence of these defendants: I propose then to ask what the defendants did in relation to this lot of 75 cases of cold storage eggs which were received.

The Court: Q. What did you do with those 75 cases?

A. We brought them back—opened up the cases and put them just one high on flats so that they could be dried out, because when the case is taken out from storage they sort of sweat, get all moist.

Mr. Hippeli: Q. Who told you to do that?

A. Mr. Goddard. [627]

Mr. Faulkner: I object to all that as hearsay, not within the issues of the case. In other words, may I indicate a thought to your Honor? The ordinary conspiracy charge develops where there is nothing normal about the relation of the parties or the business they are conducting. In other words, a group of men conspire to bring in liquor. They

(Testimony of Henry Lester Pineda.)

conspire to counterfeit money or something, so that every act they do from day to day is an act in furtherance of the conspiracy, and when you take a legitimate business that has been in existence for a long time, forty or fifty years, or twenty or thirty years——

Mr. Pratt: I object to such statements.

The Court: It is nearly time to adjourn now. I will excuse the jurors until two o'clock. The jurors may be excused.

(The jurors retired from the court room, after which the Court and counsel discussed the objection, after which the following occurred:)

The Court: The Court at this time will sustain Counsel's objection on the ground a proper foundation has not been laid for the admissibility of this testimony.

(A recess was taken until 2:00 o'clock p.m.)

Afternoon Session, January 24, 1946, 2 p.m.

The Court: You may proceed, gentlemen.

HENRY LESTER PINEDA,

recalled.

Direct Examination (Resumed)

Mr. Hippeli: Q. Directing your attention to the winter of 1941, do you recall Colonel Hand being present at the Nye & Nissen plan and inspecting eggs at that plant? A. Yes, I do.

Q. Who was present?

(Testimony of Henry Lester Pineda.)

A. There was Ed Menges, Mr. Nix, and Mr. Goddard.

Q. And you were present, were you not?

A. Yes.

Q. Was there a lot of eggs in your presence?

A. Yes, there was.

Q. Will you describe where the eggs were with reference to Colonel Hand?

A. Well, the lot of eggs were right outside the candling room. As you go into the candling room they were placed outside.

Q. Where was Hand with respect to——

A. Hand was right in front of the aisle, in front of the eggs, in the aisle.

Q. Are there any marks on those cases of eggs?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial. The eggs speak for themselves and are the best evidence. It is not binding upon the defendants here and not within the issues framed in this indictment. [629]

The Court: Overruled. If he knows he may answer.

Mr. Falkner: Exception.

The Witness: There were no marks on them.

Mr. Hippeli: Q. What did Colonel Hand do?

Mr. Faulkner: Same objection, hearsay as to the defendants. The fact men were in a plant would not make them chargeable with the activities of Colonel Rand.

Mr. Pratt: He said they were there. He said Menges and Goddard and Nix were there.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: In the plant. They were there in the winter of 1941. We don't even know the time. It may be November or December of that year or January or February or March. We have a whole year of time.

The Court: Fix the time.

Mr. Hippeli: Q. Where was Mr. Goddard and Mr. Menges with respect to Colonel Hand and the lot of eggs?

A. Right alongside of him.

The Court: When was this?

A. February, 1941.

Q. February, 1941? A. Yes.

The Court: All right.

Mr. Hippeli: Q. Were these cases of eggs opened or closed? A. They were opened.

Q. What was done with the eggs?

Mr. Faulkner: The same objection.

The Court: Overruled. [630]

Mr. Faulkner: Exception.

The Witness: A. The eggs—Colonel Hand picked out his cases of eggs that he wanted to bring inside the candling room to candle. When he picked out the cases of eggs we brought them outside the candling room and shoved in to him where he had his light.

Q. Did Colonel Hand go into the candling room?

A. Yes.

Q. Who pushed those cases of eggs in to Colonel Hand? A. Mr. Menges.

(Testimony of Henry Lester Pineda.)

Q. Did you assist in pushing those eggs into the candling room? A. Not at that time.

Q. While Colonel Hand was in the candling room did you observe the conduct of any of the defendants? A. Yes.

Q. What did they do? A. Who?

Mr. Faulkner: We object unless it is a shipment of eggs that was destined for use to the United States Army or some Federal agency, and that the eggs involved in this transaction are identified. The best evidence of the eggs, the quality and everything else is the eggs. The next best evidence would be evidence of the invoice or purchase order, the shipment and delivery, and an explanation of why the eggs that are supposed to be imperfect, or evidence of some criminality on the part of the defendants are not produced. I submit that objection.

Mr. Hippeli: Q. Do you know—— [631]

Mr. Pratt: Wait a minute. If the Court please, here were eggs which were being examined, inspected by an Army officer who obviously inspects them for one purpose only, in connection with a sale of those eggs and the delivery of those eggs to the United States. What could be more definite than that, as far as requirements are concerned in a case of this sort?

Mr. Faulkner: Mr. Pratt puts his finger——

Mr. Pratt: Further more, Colonel Hand testified that the eggs were pushed into the candling room for him by Menges. Here is a corroboration of that fact and we believe we are entitled to show

(Testimony of Henry Lester Pineda.)

what happened on that occasion, what Colonel Hand did, or any of the defendants did on that particular occasion that is identified as in the month of February, 1941.

Mr. Faulkner: We submit, your Honor——

Mr. Pratt: Those eggs, as I said before, were only the eggs involved in a sale to the United States. Otherwise they wouldn't be candled or inspected or marked in any way by Colonel Hand.

Mr. Faulkner: We respectfully submit the issue in this case, as they had been in this matter, is namely that the eggs are destined for a Governmental agency, and, secondly, that they were inspected or that they were not inspected, but the ultimate fact that has to be determined in all of these transactions is that Nye & Nissen delivered eggs to a Governmental [632] agency purporting that they were one type of eggs when they were another.

Now, we don't know what type of eggs are being candled, whether they are trade eggs, Standard eggs, A eggs, or AA eggs. Wholesale cases—we have only heard of a consumers grade. A wholesale grade is an entirely different thing, your Honor. It is an altogether different type of egg involved. Cold storage eggs are just as proper for delivery as fresh eggs. We have nothing to identify this transaction as a transaction in which the Government secured eggs that were below quality as a result of this conduct unless the invoice and the

(Testimony of Henry Lester Pineda.)

purchase order is here to show what they paid for them, and they proved what they got.

All of these things that Mr. Pineda testifies to, unless they show that the Government received bad eggs, less than Standards that were indicated, the defendants are at a loss to know. To illustrate, your Honor, we had a transaction testified to by Mr. Pineda and a conversation with Mr. Moncharsh: Mr. Moncharsh says, "You go and grade those eggs the way the Army wants and make them Grade A to meet Army regulations." All the Army was buying was Standard eggs. That is the record, that is the truth. So we have a conversation with Mr. Pineda and we are supposed to meet that, about Moncharsh avoiding a Grade A sampling of eggs. If we knew what eggs were involved it would take us two minutes to show what kind of [633] eggs they got, but we cannot find out what eggs are involved in that transaction from testimony of this type. We can't defend against it, and it is too general. It does not support the charge in the indictment. I submit unless the transaction is tied up with a delivery where it is known what they got, and known what they were billed for, there can be no evidence. The ultimate effect of that evidence is inadmissible here.

Mr. Pratt: If the Court please, in the view of the Government in this particular instance it does not make the slightest particle of difference whether the eggs that were ordered were A eggs or B eggs, or any other kind of eggs, or storage eggs, or fresh

(Testimony of Henry Lester Pineda.)

eggs. The indictment charges here a conspiracy to impede the Government, the Inspectors of the Government, in the grading, weighing and purchasing of eggs. Now, if it appears by the testimony of this witness that a fraud was practiced upon the Government inspectors in connection with the inspection of eggs, it is certainly relevant to this inquiry, and whether or not we can trace those exact eggs so as to produce a purchase order for them, a delivery receipt for them, an invoice for them, is entirely beside the question. The fact is that Colonel Hand was there for the purpose of inspecting eggs, and a fraud was practiced upon him in that connection, and I think we are clearly entitled to show it.

Mr. Faulkner: The indictment in this case, your Honor, charges a conspiracy, and it charges a violation of section 80. [634] Those are the blanket statutes, but Judge Rudkin said a man does not come into court and attempt to defend against the sins of a lifetime. He is there to meet a particular charge. The charge here is a conspiracy to present false and fraudulent claims against the Government and the actual presenting of false and fraudulent claims against the Government.

Mr. Pratt: That is not the charge.

Mr. Faulkner: If you will just wait. The indictment is very definite and it charges that the defendants conspired to defraud the United States Government by impeding and impairing their method of grading and inspecting eggs. Now, we

(Testimony of Henry Lester Pineda.)

have had the testimony of Mr. Hand, and he has told how he inspected eggs as a generality, and he has testified to particular transactions. Now, Mr. Pineda is asked general questions on that matter without tying it in. I submit the objection, your Honor.

The Court: For the purpose of the record, counsel, indicate for the record the purpose of this offer.

Mr. Pratt: Do you want me to do it without the hearing of the jury?

The Court: No, no. You are offering testimony here now. Indicate to the Court the purpose of this offer. To prove what?

Mr. Pratt: The purpose of the offer is to show fraud being practiced upon the Government inspectors, the Army inspectors in connection with the inspection of a quantity [635] eggs at a certain definite time. My copy of the indictment is a mimeographed copy, but it is after the general allegation that these defendants entered into a conspiracy to defraud the United States, the manner and means of it, the Government was to be defrauded by such means and they are stated in three paragraphs, A, B and C. The second of these is to defraud the United States by impeding, impairing, obstructing and defeating the lawful function of the United States Department of Agriculture, War Department, and the Navy Department, in the inspection, grading, weighing and purchase of eggs.

Now, paragraph C is by circumventing and avoiding the standard grades, weights and specifications

(Testimony of Henry Lester Pineda.)

to which said purchases are subject by means of false and fictitious inspections, grading and weighing and with the prevention of honest and accurate inspections, grading and weighing by said representatives and by other tricks, schemes, devices and concealment in the manner and by the means hereinafter set forth.

Without going into the particulars that are named following what I have read, it seems to me perfectly obvious that the offer we make here, which is to this effect, that Colonel Hand, in making those inspections, or attempting to make those inspections of certain eggs at a certain time was deceived as to the eggs which he was candling by means of so-called sample cases being passed in to him in the candling room instead of the cases which he had selected for candling. It seems [636] perfectly clear to me that the evidence which we seek to adduce from this witness is clearly in furtherance of and in support of the paragraphs of the indictment which I have read.

Mr. Faulkner: Your Honor will recognize that that is not an offer of proof which your Honor asked for. In the light of what Mr. Pratt says, there is no requirement under the law for Nye & Nissen to let an Army inspector go into their plant at all. In other words, they had contracted to deliver eggs to the Army and they could deliver them, and at the point of delivery the Army makes an inspection. This is just a courtesy inspection that is ordinarily accorded to the Army and Navy. The

(Testimony of Henry Lester Pineda.)

impeding of any function of the Army inspectors has to be at the point of delivery to be legally within any criminal charge. I am making the objection in respect of a particular transaction. We don't know what the grades of eggs are. We don't know what the destination is.

The Court: I will allow it subject to a motion to strike and over your objection. Unless it is connected up with any defendant I will so instruct the jury. Read the question, Mr. Reporter.

Mr. Faulkner: Exception, your Honor.

(Question read by the reporter.)

Mr. Pratt: May I suggest the question before that, the last few questions be read to the witness?

The Court: Very well.

(Record read.) [637]

The Court: Who was there?

A. Mr. Goddard and Mr. Nix got what we called the dolly, the little truck that lifts the skids up on them and cleaned out all these eggs that we put up for Mr. Hand to inspect and we put them in the second cooler, and then I went to the next cooler and I started taking out the cases of eggs, storage cases of eggs, and placed them——

Mr. Faulkner: Your Honor, is this going on all seven counts?

The Court: It is going to the conspiracy count.

The Witness: And placed them where the others had been on the floor.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: Q. Who instructed you to do that? A. Mr. Goddard.

Q. What type of eggs did you place out on the floor for Colonel Hand, while Colonel Hand was in the candling room? A. Storage eggs.

Q. How do you know they were storage eggs? How do you know that?

A. Well, I helped to open them up when they came from the storage room.

Mr. Faulkner: We object to that as calling for an opinion and conclusion of the witness. He is not qualified to pass upon what a storage egg is. I might point out the fact eggs come from a storage place has a very slight relation as to whether they are storage eggs within the meaning of the [638] specification.

The Court: Read the question.

(The record was read by the reporter.)

Mr. Faulkner: We submit the witness has not qualified on that subject. I ask the court for permission to ask three questions of the witness on his qualifications as to whether they were storage eggs.

The Court: You may.

Mr. Faulkner: Q. Mr. Pineda, how long does an egg have to be in a storage——

The Court: He said they came out of the storage did you say that? A. Yes.

Mr. Faulkner: Q. Are all eggs that come out of a storage place storage eggs?

(Testimony of Henry Lester Pineda.)

A. At the storage plant, it all depends how long they were in there.

Q. Do you know how long the eggs that you say you changed were in the storage plant?

A. No.

Mr. Faulkner: I ask that any testimony the witness has given on the fact that these were storage eggs go out.

The Court: Your questions and answers and the witness answer that they were storage eggs may go out. Develop the facts. Did you see those eggs?

A. Yes.

Mr. Hippeli: Q. Do you know if the eggs which were on the floor of the plant came from cold storage? A. Yes.

Q. How?

A. In cold storage eggs a card was placed on each case of eggs and when they would take them out then they could identify [639] the lot. When a certain company puts their cases of eggs in cold storage they place a card on them so they know when they call for them what the lot is.

Q. Did you open the eggs when they were first received? A. Yes.

Q. Will you describe the condition of the eggs when you opened them?

A. They were very cold. After they were opened for a certain length of time they started getting wet, like sweating.

Q. Did Mr. Moncharsh see you open them?

A. Quite a few times. He instructed us to keep

(Testimony of Henry Lester Pineda.)

the cases of eggs far apart so air will get to them and go through them and dry them fast.

Q. That was on this particular occasion?

A. Yes.

Q. After the eggs from cold storage were allowed to dry, what was done with them?

A. They were taken outside the candling room and given to the girls and they took out the mildewed eggs——

Mr. Faulkner: I object to that. That is a conclusion of the witness.

The Court: Did you see that?

The Witness: Yes.

The Court: State what occurred.

Mr. Faulkner: We object to him stating his conclusion of why things were done.

The Court: Read the question and the answer.

(Record read.) [640]

The Court: That may go out.

The Witness: The eggs had frozen yolks, sometimes they get so cold they are frozen.

Mr. Faulkner: That is not responsive.

The Court: It may go out.

Mr. Hippeli: Q. Did you have any conversation with Mr. Goddard about the manner in which the eggs from cold storage were being handled?

A. Yes. I had charge of the candling room.

Q. What was that conversation?

A. Well, the eggs were opened——

The Court: Just a minute. State the conversation.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: The time and place.

The Court: Wait a minute. When was it?

The Witness: That was just before this order, that was about two or three weeks before the case of eggs would be inspected, that would be in February 1941.

The Court: February 1941.

Mr. Hippeli: Q. Who was present at the time of the conversation?

A. Well, I think it was just Mr. Goddard and I. I went to his office.

Q. Where was this?

A. 324 Townsend Street.

Q. Where? Inside the plant?

A. In Ruby Goddard's office.

Q. What was said?

A. I complained because——[641]

Mr. Faulkner: The same objection, your Honor. Mr. Zirpoli calls my attention to this, your Honor, here is a conversation three or four days before there is even in existence an Army order or an Army inspection and Mr. Goddard and Mr. Pineda are talking in Mr. Goddard's office. No order in existence; and no inspection order. The Army has nothing to do with the——

Mr. Pratt: The same eggs he has been talking about. The same eggs as Colonel Hand——

Mr. Faulkner: I think it will be running the Court into——

Mr. Pratt: There is something I resent. He said, your Honor, luring the Court into——

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: Into a bad position.

Mr. Pratt: I resent any such implication as that. Counsel ought to know much better than to make a charge against government counsel of that character.

Mr. Faulkner: Counsel for the government—I make the charge and I will make it stick on that record there, your Honor, what they intend to prove, he read it from the indictment, and then he asks the man for a conversation between the witness and a defendant when there is no Army inspection ordered and there is no Army order in existence.

The Court: I will allow it as a preliminary question. He may answer. [642]

Mr. Faulkner: Exception.

The Court: Read the question.

(Question read.)

A. I went up to Mr. Goddard, I told him what was I supposed to do with those eggs. He told me to break them down in a whole case, that means a can of eggs where the eggs and the yolk is all mixed up.

Mr. Faulkner: That is not a conversation.

The Court: Read the answer.

(Record read.)

The Witness: He said—I told him I can't get anything further out of these cases of eggs and he told me to do the best I can. I told him the yolks were frozen, I couldn't do anything with them, they were all mixed up.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: Q. What did he tell you then?

A. He said, "That's all; you take my orders that I give you." —all these frozen yolks— "You can do what you can, as much as you can." It was like water, they were all wet——

Mr. Faulkner: I ask that go out. He is asked for a conversation and he goes on——

The Court: Let the question and the answer stand.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Did Mr. Goddard say that that was how he had ordered the particular lots of eggs in cold-storage to be handled? A. Yes. [643]

Mr. Faulkner: Same objection. We ask that go out.

The Court: The question is leading. Objection sustained.

Mr. Hippeli: Q. Was anything further said at the conversation with Mr. Goddard with reference to the candling of the lots of eggs that came from cold-storage? A. He just told me that——

Mr. Faulkner: Same objection.

The Court: Overruled.

Mr. Faulkner: Exception.

The Witness: The frozen yolks and the mildewed eggs and the leakers were what he give to me in the breaking room to do what I could. The rest would be put into the cases with the strips of paper inside to be used for the order.

Mr. Hippeli: Did the girls candle that lot of eggs? A. The storage eggs?

(Testimony of Henry Lester Pineda.)

Q. Yes. A. Yes.

Q. Now, will you tell us how they were packed?

A. They were packed with a strip of paper, each case, fifteen dozen on each side of a case, and two strips of paper again on each side of each case, that would be four ends on each side of the case.

Q. This lot was then placed in the cooler?

A. Yes.

Q. At that time was there any lot—did you observe any other lots of eggs present in the plant?

A. Yes, fresh eggs.

Q. Where were they?

A. They were further away up the [644] plant.

Q. Were they on the floor or in the cooler?

A. On the floor.

Q. When Colonel Hand came in to inspect eggs, did he observe the eggs on the floor?

Mr. Faulkner: We object to that. The witness can't testify to what Colonel Hand observed.

Mr. Hippeli: Q. Did you see Colonel Hand enter the plant? A. Yes.

Q. Did you see Colonel Hand——

Mr. Faulkner: We have no time, we have no people——

The Court: If you gentlemen would be more careful—I might get nervous. Go over and sit down and let's proceed orderly. Proceed.

Mr. Faulkner: May we have the time fixed, your Honor?

The Court: Fix the time.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: Q. Did you observe Colonel Hand enter the Nye & Nissen plant? A. Yes.

Q. When did he enter the plant with respect to the time at which the lot of eggs had been removed?

A. It was in the morning, about February.

Q. What morning with respect to the time which the lot of eggs had been removed and placed in the cooler?

A. This would be about, this was about two days after we opened the cases out of storage. [645]

Q. What did you observe on that occasion?

A. We had——

Mr. Faulkner: The persons present.

Mr. Hippeli: Who was present at that time?

A. Mr. Menges, Mr. Goddard, Mr. Nix and myself and Colonel Hand.

Q. What did you observe Colonel Hand do?

A. He picked out the cases of eggs that he wanted us to bring to the candling room for him to inspect.

Q. From what lot of eggs did he select certain cases to be inspected?

A. From the fresh case lot that was outside and put in the same order that we had placed the storage eggs.

Q. How did he indicate the eggs which he desired to grade?

A. Colonel Hand put a mark with white chalk.

Q. What did Colonel Hand do then?

A. He marked the cases he wanted and we then

(Testimony of Henry Lester Pineda.)

placed them on some dumps, put them on a truck and took them to him while he was

Q. What did he do then?

A. He went to the candling room and Mr. Menges handed him the eggs.

Q. Which eggs were these?

A. They are fresh eggs.

Q. That was on the dump that went over there?

A. Yes.

Q. Did he candle those eggs? A. Yes.

Q. While he was candling those eggs did you observe the conduct of any of the defendants?

A. Yes.

Q. What did they do?

A. Mr. Nix and Mr. Goddard took these fresh eggs and placed them in the cooler and I got [646] the eggs that were in the cooler and put them where the fresh eggs had been.

Q. The fresh eggs, those were the eggs on the floor? A. Yes. They were placed in the cooler.

Q. Were there eggs in the cooler?

A. Yes, they were in the middle cooler and I went to the second cooler, I took out the cases of eggs that we had placed there beforehand and put them in the place of the fresh eggs.

Q. Who instructed you to do that?

A. Mr. Goddard. [647]

Q. After Colonel Hand completed his inspection, after he completed his candling in the candling room then what was done?

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: We ask that the time, place and persons present be fixed.

A. It was the same date, the same time.

Mr. Hippeli: Q. The time is right after he was candling?

A. Right after he finished candling.

Q. Who was present then?

A. The same; Mr. Nix, Mr. Goddard, Mr. Menges, Colonel Hand and myself.

Q. What was done then?

A. Well, just about ten minutes or fifteen minutes before he had finished his inspection Mr. Ruby Mr. Goddard asked him if everything was all right, and Colonel Hand said it was. So we had to get these strips of paper and sort of stick them together with that stickum paper, and we got a little brush with a little water there, rubbed it over, and held them together for a few seconds to stay in place.

Q. Who directed you to do that?

A. Mr. Goddard. By that time Colonel Hand came out and he would go around and place his seal on the top of these four strips on each side of the case and one stamp on the side of the case.

Q. Had any of those cases which he had stamped at the four strips of paper previously been sealed?

A. Yes, and all we did was go over with the wet brush so when he put his seal on it would be be a little wet and would indicate to him it had been just sealed.

Q. What cases did Colonel Hand stamp?

(Testimony of Henry Lester Pineda.)

A. He stamped the cases [648] that were the storage eggs that had been in the cooler when the word came in.

Q. Did he stamp any of the cases that had been shown to him when he first entered the plant to inspect a certain lot?

A. Yes, he stamped two of them.

Q. Two out of a lot of how many?

A. He would take out about seven or eight cases of eggs.

Q. How large was the whole lot he inspected?

A. The whole lot was from 50 to 60.

Q. Was Mr. Moncharsh present on the floor during the time Colonel Hand was inspecting or candling those eggs? A. No.

Q. Was Mr. Moncharsh down on the floor in your presence prior to the time these eggs were candled or inspected by Colonel Hand?

A. That same day?

Q. Yes? A. No.

Q. Was he present on any prior day?

A. Yes, when we took the eggs from the storage.

Q. At what time was that?

A. In the afternoon.

Q. Who was present at that time?

A. Mr. Nix, Mr. Goddard, Mr. Moncharsh and myself.

Q. What was said at that time?

A. Well, we——

Mr. Faulkner: Same objection, your Honor.

The Court: The objection will be overruled. You may answer.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: That is incompetent, irrelevant and immaterial, not within the issues of the case, hearsay, and no [649] foundation laid in that the eggs involved at the subject matter here or the type of eggs which would come within the purview of the indictment.

The Court: The objection will be overruled. He may answer. State the conversation.

Mr. Faulkner: Exception.

A. Jimmie—Mr. Nix and I were placing the eggs. There were too many on one skid. Mr. Moncharsh and Ruby were talking, and they told us to spread the eggs out a little more on the floor, not to pile them too high. We were placing them three high.

Mr. Hippeli: Q. Did Mr. Moncharsh say anything else with respect to the order?

A. Well, he said for us to do a good job because Lieutenant—I think it was Lieutenant then—I think he said Lieutenant Hand would be coming out on that order, would inspect that order.

Q. Did Mr. Moncharsh make any mention of the eggs that were obtained from the storage house?

A. No—well, he said—he told—he asked Ruby, rather, if he had enough storage eggs for awhile and Ruby said yes; whenever he would be running short of them, to get out some more so we would have enough of these eggs out ahead of time so they wouldn't be so cold and they would be sweated out, because the girls would be complaining. We

(Testimony of Henry Lester Pineda.)

would be giving them cold storage eggs and their hands would be too cold.

Q. Was there any mention of sample eggs in this conversation? [650]

A. No.

Mr. Faulkner: We will object to all those questions as leading and suggestive. I have not objected on that ground, but one after another have been asked.

The Court: Read the question.

(Question and answer read.)

The Court: Proceed.

Mr. Hippeli: Q. After Colonel Hand had placed his inspection stamp on the strips of paper on the cases of eggs, what was further done with respect to those cases?

Mr. Faulkner: We ask that the time, place and persons present when these acts are supposed to have taken place be stated.

Mr. Hippeli: Q. Directing your attention immediately after the time Colonel Hand stamped those cases, was anyone present in the vicinity of those cases?

A. After Mr. Hand placed his stamp on them, after he had left, why, Mr. Nix and I and Mr. Goddard would start nailing up the cases of eggs, putting full covers on them.

Q. What was done with those cases of eggs that had been stamped?

A. Well, some would be left there for the driver to take out and some would be put into the cooler.

(Testimony of Henry Lester Pineda.)

Q. Which were put into the cooler?

A. Well, a certain amount of cases. I wouldn't know how many.

Q. What had been done with the cases of eggs that Colonel Hand [651] observed upon coming into the plant?

A. They would stay in the cooler.

Mr. Faulkner: There is no evidence that Colonel Hand first observed. We do not know what he first observed. The only person who could testify to that would be Colonel Hand.

The Court: Read the question.

(The last question was read by the reporter.)

The Court: You are assuming a fact not in evidence, namely, that he did observe them. This witness would not know. It may go out and the Jury will disregard it.

Mr. Hippeli: I will withdraw the question.

Q. Do you recall what driver delivered the cases of eggs that Colonel Hand had stamped or removed them from the plant?

A. I believe it was Mr. Eby. Whether he delivered them or just brought them up to the front of the plant I wouldn't know.

Q. Now, when Mr. Eby has cleared the floor of the plant——?

Mr. Faulkner: Just a moment. He does not know whether it is Mr. Eby. He just said he didn't know.

Mr. Hippeli: Q. After Colonel Hand's inspection was the floor of the plant cleared?

(Testimony of Henry Lester Pineda.)

A. You mean of these cases of eggs?

Q. Yes? A. Yes.

Q. Did you observe another lot of eggs coming into the main floor of the plant?

A. Well, a little later that day.

Q. Did you observe whether these eggs had been in cold storage?

A. Yes, they were the same type as the ones we had opened up a [652] few days before.

Mr. Faulkner: Your Honor has already ruled. I am put in a difficult position puting in objections to questions like that after the Court has ruled. The witness is not qualified to show that.

Mr. Hippeli: I thought I had framed the question to the effect that the eggs were from cold storage, not cold storage eggs.

Mr. Faulkner: The Court has asked you to indicate what you saw and what you observed.

The Court: Read the question. I think there is a little confusion.

(The last question was read by the reporter.)

A. Yes.

Mr. Faulkner: We ask that the answer go out. I object to it on the ground it is incompetent, irrelevant and immaterial, and the witness is not qualified as an expert to determine from the inspection of eggs whether they have been in cold storage.

The Court: He said he saw them coming from cold storage.

The Witness: They are cold storage eggs. They have these cold storage cards on them. You don't